

Post-Hearing Procedure

1.0 This Practice Direction:

- explains what a post-hearing request is
- provides examples of common post-hearing requests
- describes the Tribunal Counsel Office's post-hearing role
- explains how communications with a Vice-Chair or Panel are handled
- describes the Medical Liaison Office's role
- sets out the steps that must be completed in order to obtain medical information
- explains what an Assessor is
- identifies what should happen when a party discovers new evidence
- describes what happens when more hearing dates are needed
- describes the usual method of obtaining written submissions
- explains what happens after a post-hearing request is completed.

1.1 The *Workplace Safety and Insurance Act* gives the Tribunal an investigative mandate. Accordingly, Vice-Chairs or Panels may obtain additional information that was not before them at the hearing date if they feel it is necessary to properly adjudicate an appeal. These requests are called post-hearing requests or instructions.

1.2 The Tribunal Counsel Office is responsible for carrying out the post-hearing requests for additional information made by Panels and Vice-Chairs. These post-hearing requests are in the form of a memorandum or a formal interim decision. These memoranda and decisions are referred to the Tribunal Counsel Office. An interim decision is a decision of a Vice-Chair or Panel which does not finally dispose of all issues under appeal. Interim decisions often contain instructions to be carried out on a post-hearing basis.

1.3 A Vice-Chair or Panel can request any type of information, including testimony from additional witnesses, if they think it will help them make a fair decision. Some common types of information requested are:

- additional medical information such as clinical notes, medical records and reports
- disability claim applications for benefits such as CPP, EI and ODSP
- assessor reports (additional medical information from independent health professionals)
- additional documents from the parties or the Workplace Safety and Insurance Board
- written post-hearing submissions from the parties and Tribunal Counsel.

1.4 The Vice-Chair or Panel decides an appeal, not Tribunal staff. The post-hearing role of Tribunal Counsel Office staff members is to assist the Vice-Chair or Panel to make a decision by completing the Vice-Chair or Panel's instructions and making submissions where appropriate. While Tribunal Counsel Office staff members will provide information to the parties on an appeal's progress and Tribunal practices, they do not act as the representative of any party. If parties require advice on how to argue their case, they may want to obtain professional representation.

2.0 Communication

2.1 Parties cannot communicate directly with a Vice-Chair or Panel concerning an appeal. All communication goes through the Tribunal Counsel Office, who will then communicate with the Vice-Chair or Panel in writing.

2.2 All communications between a Vice-Chair or Panel and the Tribunal Counsel Office are shared with the parties, including post-hearing instructions. If a party to an appeal wants to raise an issue with the Vice-Chair or Panel, the party is encouraged to put the concerns in writing and forward this document to the Tribunal Counsel Office.

2.3 The Tribunal will correspond directly with a party's authorized representative. Parties should copy their correspondence to all other parties to an appeal. If a party is represented, it is appropriate to copy the representative.

2.4 The Tribunal Counsel Office will keep parties informed of what is happening with an appeal and provide them with copies of any information obtained. Parties may

contact the Tribunal Counsel Office staff member assigned to their appeal if they have any questions or concerns.

- 2.5** At any time, the Tribunal Counsel Office may seek further instructions from the Vice-Chair or Panel hearing an appeal.
- 2.6** Once a hearing, including post-hearing activity, is complete, there is no further communication between the Tribunal Counsel Office and the Vice-Chair or Panel adjudicating an appeal. The Tribunal Counsel Office does not play any role in the adjudication of an appeal and has no information as to what a decision will be.
- 3.0 Additional Evidence and Unsolicited Information**
- 3.1** As the Tribunal has an investigative mandate, Vice-Chairs and Panels may request that the Tribunal Counsel Office locate additional relevant information they feel they need to make a fair decision. The cooperation of the parties is often necessary to obtain additional information. Prompt response to correspondence and phone calls will help avoid delay.
- 3.2** Once the hearing day(s) for an appeal are complete, parties cannot send new evidence to the Tribunal without the permission of the Vice-Chair or Panel. Parties should make every effort to produce all evidence prior to the three week deadline before the first hearing date. If, however, new documents or other information is discovered after the first hearing date, parties should submit it under a covering letter explaining why it could not have been obtained prior to the first hearing date.
- 3.3** Parties must provide copies of any new evidence to all other parties to an appeal. The Tribunal may request submissions from all parties as to whether new evidence should be accepted.
- 3.4** The Vice-Chair or Panel may decide if new evidence will be accepted before they direct the Tribunal Counsel Office to forward the new evidence to them. Vice-Chairs and Panels may decide not to accept additional evidence sent to the Tribunal after a hearing.
- 3.5** In some appeals, it is useful for a Vice-Chair or Panel to understand what is happening with a worker's claim(s) or an employer's assessments at the Board. The Tribunal will include in the case materials any relevant updates it receives to a Board file. Updates to a Board file can be admitted at any time prior to post hearing activity being complete.

4.0 Additional Medical Evidence

- 4.1** A Vice-Chair or Panel may request additional medical information. In order for the Tribunal to obtain medical information about a worker, the Tribunal asks that the worker complete a Consent To Disclose Personal Health Information form. This form must be signed, dated and witnessed by another person who sees the worker sign the form. The Tribunal requires the original signed copy.
- 4.2** The Tribunal's consent form also asks that the worker state whether s/he agrees to release the medical information to the employer once it is received. If an employer is participating in an appeal, that employer has a right to see and make submissions on information that informs a Vice-Chair or Panel's decision. A worker's refusal to release any new medical information to an employer may delay an appeal. If a worker feels very strongly about not releasing medical information to the employer, s/he can identify specific information that is not relevant and that s/he does not want released. The Panel or Vice-Chair will decide if that medical information will become part of the case materials.
- 4.3** The Tribunal will pay fees, according to the Tribunal's fee schedule, to doctors who provide additional medical information that was requested by the Vice-Chair or Panel hearing an appeal.

5.0 Report from a Medical Assessor

- 5.1** The Tribunal is authorized to maintain a list of independent health professionals. These medical experts, known as Assessors, can provide assistance on medical issues in appeals when requested by a Vice-Chair or Panel.
- 5.2** When a Vice-Chair or Panel wants to request an opinion from an Assessor, they will advise Tribunal Counsel Office. The Medical Liaison Office will then select an Assessor with a specialty relevant to the type of opinion that is required. A health professional who has already been consulted by a worker about their case cannot be used as an Assessor.
- 5.3** Usually the Assessor is asked to review the medical documents and send a written opinion to the Tribunal. Sometimes the Assessor is asked to examine the worker before completing the written report. The Vice-Chair or Panel may request the Assessor to testify at an oral hearing, but usually a written report is enough. If an Assessor does testify, he or she is the Tribunal's witness.

- 5.4** The Vice-Chair or Panel will determine the questions they want the Assessor to answer. This is usually done after findings about the facts of the case have been made. While the Medical Liaison Office may have general suggestions or the parties may have requests regarding what questions should be asked, it is up to the Vice-Chair or Panel to decide what questions will be asked of an Assessor.
- 5.5** The Medical Liaison Office prepares the materials to be sent to the Assessor. Usually, all medical information, as well as correspondence and memos related to the medical issues, is included in an Assessor Brief. The Vice-Chair or Panel and the parties are provided with an opportunity to comment on the documents contained in the Brief before it is sent to the Assessor. The Vice-Chair or Panel may issue instructions about the documents in the Brief after considering these comments.
- 5.6** The Tribunal sends to the Assessor the questions approved by the Panel or Vice-Chair, the Assessor Brief, and the Interim Decision or post-hearing memo containing the Vice-Chair or Panel's findings of fact. The Medical Liaison Office's covering letter instructs the Assessor to provide his or her medical opinion based on the findings of fact.
- 5.7** When the Tribunal receives the report from the Assessor, it is provided to the Vice-Chair or Panel and all the parties to an appeal. The Parties will have an opportunity to make submissions on an Assessor's report before the Vice-Chair or Panel makes a final decision on the appeal.
- 6.0 Reconvened Hearing Days**
- 6.1** Sometimes a Vice-Chair or Panel will decide that new hearing days are needed to complete a hearing. These added hearing days are called a reconvened hearing. The Tribunal Counsel Office will request that the Tribunal's Scheduling department arrange for the further hearing day(s) on a date that all parties and the Vice-Chair or Panel hearing the appeal are available.
- 6.2** The Tribunal Counsel Office will update the case materials by compiling any further correspondence into an addendum before the hearing date.
- 6.3** Parties should bring all case materials to the reconvened hearing.
- 6.4** A Vice-Chair or Panel usually stays seized with an appeal after there has been a hearing. If a Vice-Chair or Panel does not stay seized, a new Vice-Chair or Panel will be assigned for the reconvened hearing.

7.0 Post-Hearing Submissions

7.1 Parties will be given an opportunity to make submissions on all post-hearing evidence. According to the Vice-Chair's or Panel's instructions, these submissions may be made at a reconvened hearing, but usually written submissions are requested.

7.2 Unless otherwise specified by the Vice-Chair or Panel, all parties to an appeal will be asked to provide their initial submissions simultaneously and by a specific deadline date. All parties will then be given additional time to provide submissions in reply to those of the other party (or parties) if they so choose. Written submissions should be forwarded to the Tribunal Counsel Office and also copied to all other parties to an appeal.

7.3 Parties should make every effort to ensure their submissions are received by the deadline date. A Vice-Chair or Panel may choose not to accept written submissions that are received after the deadline date. If an extension is required, the party should contact the Tribunal Counsel Office with the reasons for the extension request. The Tribunal Counsel Office may seek instructions regarding the extension request from the Vice-Chair or Panel hearing the appeal.

8.0 What Happens When a Post-Hearing Request is Complete?

8.1 Once all of a Vice-Chair or Panel's post-hearing instructions are complete, the Tribunal Counsel Office's involvement in an appeal ends. All information and correspondence will have been provided to the parties. The Tribunal Counsel Office will advise the Vice-Chair or Panel hearing the appeal that the post-hearing stage of an appeal is complete.

8.2 When the post-hearing stage of the appeal is complete, all of the case materials are with the Vice-Chair or Panel and there is no communication between the parties or the Tribunal Counsel Office until a final decision is released. The Tribunal Counsel Office staff do not help the Vice-Chair or Panel to write the decision. If a Vice-Chair or Panel decides that still more information is required, they may still issue another post-hearing request in the form of a memorandum or an interim decision. Any new post-hearing request will be referred back to the Tribunal Counsel Office.

8.3 Decisions take time to complete. Once all the post-hearing information and submissions have been received, section 127 of the *Workplace Safety and*

Insurance Act provides a guideline of 120 days. Complex appeals may take additional time. Once the final hearing date or post-hearing instructions have been completed, a party who wants to inquire about the status of a decision may contact the Chair's Office.

Dated at Toronto, Ontario this first day of October, 2007
Workplace Safety and Insurance Appeals Tribunal
I.J. Strachan, Tribunal Chair